

NORFOLK CIRCUIT COURT

George E. Schaefer, Clerk



PRO SE DIVORCE BROCHURE

Rev 1/2006

Dear Circuit Court Patron:

My staff and I are dedicated to providing the best possible service to those using the Court. With this goal in mind, we developed the attached handout to help you in obtaining a divorce. The handout consolidates into one place all of the information that my office can legally provide to the public. You are responsible for preparing all the necessary documents for your case.

This handout is **not** intended to replace competent legal advice. In fact, I strongly recommend that you hire an attorney to represent you in this matter. In addition, Virginia law prohibits my staff from providing legal advice. Therefore, please **DO NOT** ask the Clerks Office personnel for legal advice.

It is my sincere hope that this information will help make your divorce process easier and less time consuming for you and your family.

Sincerely,
George E. Schaefer
Clerk, Norfolk Circuit Court

PRO SE DIVORCE SUITS

PRO SE or NO-FAULT divorce suits are best suited for couples who completely agree to get a divorce. If you have children, if there is property in dispute (i.e. retirement plans), if you want monetary support from your spouse, or if you are alleging fault by your spouse, retaining an attorney may best protect you. If you do not know your spouse's whereabouts, or if he/she is in jail for committing a felony, you should hire an attorney.

All persons involved in divorce cases are strongly encouraged to consult with an attorney so that the legal effects of these proceedings can be fully explained to each litigant. **IF YOU PROCEED WITHOUT LEGAL COUNSEL**, you may forever unknowingly waive your rights to child or spousal support, equitable distribution of property, and other legal claims arising out of your marriage.

The Clerk's Office cannot make recommendations for specific attorneys, but you can call:

The Virginia Lawyer's Referral Service
1-800-552-7977

Or

The Norfolk & Portsmouth Bar Association Lawyer Referral Service
757-623-0132

Or

Norfolk & Portsmouth Bar Association's Law Library
1300 Wachovia Tower
999 Waterside Drive
Norfolk, VA 23510
(757) 622-2910

If you decide to proceed on your own, you will be expected to follow the same procedures as an attorney. It may take three to six months to complete your divorce if there are no complications.

Please be aware the Clerk's Office has no specific forms to fill out for your divorce. You are responsible for preparing all documents pertaining to the divorce. Please **DO NOT** ask Court personnel for legal advice or assistance. Court personnel are prohibited by state law from giving you legal advice or assistance.

Before you file for divorce, you may wish to review the appropriate divorce laws in the Virginia Code. The Virginia Code books are located in the Law Library at the Dominion Tower and at many public libraries. A review of these laws may help you better understand the divorce process.

All parties involved in contested divorce cases can have the case heard by a Judge of this Court or by one of the Court's Commissioners in Chancery; if equitable distribution in contested the case must be heard by a Commission in Chancery. If **all** issues, such as grounds for divorce and distribution of property, are totally uncontested, a Judge of this Court will hear the case.

PROCEDURE

STEP ONE:

In order for you to obtain a divorce in Virginia, either you or your spouse must be a resident of the Commonwealth of Virginia for at least six months prior to filing suit.

In your **Complaint** for divorce you must allege specific grounds upon which a divorce may be granted. The two most common situations or grounds for no-fault divorces are a six-month separation or a one-year separation.

You are eligible for a six-month divorce only if you have entered into a separation agreement and there are no minor children either born of the parties, born of either party and adopted by the other or adopted by both parties. All of these facts must be stated in the **Complaint**

You and your spouse must have been separated for the required amount of time prior to filing your suit for a no fault divorce. This separation period must also be clearly alleged in your **Complaint**. You may **NOT** file your documents before the appropriate separation period has expired or your case could be dismissed. If the case is dismissed you will have to file for divorce again and pay another filing fee.

You can also file several types of fault divorces, which are treated differently than no-fault divorces.

In addition to stating the grounds and residency requirements, the **Complaint** must also include the following allegations:

- current residences of both parties
- the date and place of marriage
- the names of all minor children born or adopted into the marriage
- a statement that both parties are over eighteen (18) years of age
- a statement of each party's military status
- each party's social security number and dates of birth and each child's social security number and dates of birth shall be included using the Addendum For Protected Identifying Information –Confidential Form (Form CC-1426 is available in the Clerk's Office or can be accessed through the Virginia Judicial Website at:
http://www.courts.state.va.us/forms/circuit/cc_1426_0705.pdf)

STEP TWO: PREPARING & FILING YOUR COMPLAINT

1. Submit three copies of your typed Complaint and a completed VS-4 form. The VS-4 is a statistical form that is required for all divorce filings before the divorce can be concluded. It must be completed properly in black ink (The VS-4 Form may be obtained from the Clerk's Office)

2. INITIAL FEES:

- \$79.00 filing fee
- \$12.00 Sheriff fee, if applicable to serve the Complaint if the Defendant

- lives in Virginia.
- \$19.00 filing fee to resume Maiden Name

All filing fees and Sheriff Service Fees are paid by cash, certified check or money order made payable to the Clerk of the Circuit Court.

Please note: If the Defendant does not live in Virginia, you will need to contact the Sheriff's Department of the county in which your spouse resides in order to find out local regulations for service.

3. Your case will be given a Civil Number as soon as it is filed. This is the number by which the Court references your case and it must appear on all documents regarding your divorce.

STEP THREE: SERVING THE DEFENDANT WITH THE COMPLAINT

After you file the Complaint you must determine how the Defendant will be served with the Complaint. The Complaint may be served by methods specified pursuant to §8.01-296 by a Sheriff or person authorized to serve process in accordance with §8.01-293. If service is to be by Sheriff or Private Process Server, you must request the Clerk to prepare a Summons. If you arranged for this service, the Sheriff or Private Process Server will receive a Summons and a copy of the Complaint to serve on the Defendant. The Defendant may also accept legal service of the Complaint by signing a notarized statement that he/she has received a copy of the Complaint. This may be done before any Notary Public or Deputy Clerk in the Clerk's Office. Once they have been served, the Defendant has 21 days to respond to the Complaint. The Defendant may also accept service by checking the appropriate box on the "Acceptance/Waiver of Service of Process and Waiver of Future Service of Process and Notice" - Form CC-1406. This form is available in the Clerk's Office or can be accessed through the Web Site of the Virginia's Judicial System at: WWW.COURTS.STATE.VA.US/FORMS/CIRCUIT/CC-1406Rev-1.PDF

After the service, the Defendant may choose to waive further notice of the proceedings by executing a waiver form (Form CC-1406). The form must be signed under oath in front of a Notary Public or Deputy Clerk of the Circuit Court. (Note: The Waiver of Notice cannot be executed prior to the filing of the Complaint.)

TYPES OF SERVICE:

ACCEPTANCE OF SERVICE:

- Pursuant to Va. Code §20-99.1:1, a Defendant may accept service by signing a proof of service or an Acceptance of Service indicating that the defendant has received the papers in this suit. This form of service must be made under oath before a notary public or deputy clerk. This cannot be done until after the Complaint is filed.

ACCEPTANCE OF SERVICE MEMBER OF THE ARMED FORCES

If any party to the suit is a member of the armed forces and wishes to waive service, in addition to signing a proof of service, a waiver of rights under the soldiers' and sailors' civil relief act must be filed. This form of service must be made under oath before a notary public or deputy clerk. This cannot be done until after the Complaint is filed.

SHERIFF SERVICE:

- If the Defendant lives in the Commonwealth of Virginia, a Virginia Sheriff can serve the Complaint on them by including the Sheriff's fees in the initial filing.
- If the Defendant is a non-resident of Virginia, you will need to contact the Sheriff's department of the county in which your spouse resides in order to find out local regulations and costs for service.

The Sheriff will give the person that is being served a copy of the Complaint and the Summons. The Sheriff should execute the Proof of Service on the bottom portion of the Summons and file it with the Clerk of the Court.

Fee for Virginia Sheriff service: \$12.00 for each service

Payment is made by cash, check or money order payable to:

Clerk of the Circuit Court

PRIVATE PROCESS SERVICE:

- The Private Process Server will give your spouse a copy of the Complaint and Summons. The Process Server will execute an Affidavit of Service and will file it with the Clerk of the Court where the matter is pending within seventy-two (72) hours of service.
- Return by person serving process §8.01-325 – "If service by any other person qualified under §8.01-293, whether service made in or out of the Commonwealth, his affidavit of such qualifications; the date and manner of service and the name of the party served; and stamped, typed or printed on the return of process, an annotation that the service was by a private server, and the name, address and telephone number of the server."

SERVICE BY PUBLICATION:

Service may be effected by an order of publication on a non-resident or on a defendant whose whereabouts cannot be ascertained pursuant to Va. Code §20-104.

A publication can be printed in any Newspaper the Court has authorized to print legal notices and publications in accordance with Virginia Code §8.01-324.

The number of times the publication must appear in the newspaper is prescribed by statute.

Forms for Affidavit and Order of Publication can be obtained at the Clerk's Office or can be accessed on the Supreme Court of Virginia's web site at:

http://www.courts.state.va.us/forms/circuit/cc1435_0798.pdf

REQUIRED DOCUMENTATION FOR SERVICE BY PUBLICATION:

- Original Order For Publication
- Affidavit notarized by complainant

- An envelope addressed to your spouse at his/her last known address.
- A copy of the Complaint.
- You must make specific arrangements for payment with that newspaper. The Court will process the Order For Publication documentation and forward it to the newspaper for publication.
- Upon completion of such publication, the publisher provides the Clerk of Court the dates of publication and a copy of the published order in accordance with Virginia Code §8.01-325 by affidavit or "proof of publication". The Clerk upon receipt of the "proof of publication" shall complete a certificate of compliance in the case file in accordance with §8.01-317.

STEP FOUR- PROCEEDING WITH DIVORCE:

UNCONTESTED DIVORCES: All uncontested cases shall be heard by a Judge. These are matters where all property, custody, child support and spousal support rights are resolved, and neither party is going to put on any fault grounds for divorce, and where neither party is going to put on any evidence of the facts and circumstances leading to the dissolution of the marriage.

Restoration of Former Name - §20-121.4: If one of the parties requests in the Complaint to resume her maiden name or former name an additional fee for recording of a name change is required. Upon entry of a final decree of divorce from the bond of matrimony the court shall, on motion of a party who changed her name by reason of the marriage, restore the party's former name or maiden name by separate order meeting the requirements of §8.01-217. Upon entry of the Name Change Order - this order will be spread upon the Land Records as required.

CONTESTED DIVORCES: a Commissioner in Chancery will handle All contested divorces.

If there are any property rights to be resolved, and the parties desire to put on evidence of facts and circumstances leading to the dissolution of the marriage, the case will still be heard by a Commissioner along with the grounds for divorce.

COMMISSIONER'S HEARING

For the Court to assign a Commissioner in Chancery to hear your case, you must submit a **Decree of Reference endorsed by both parties**. The Commissioner is a local attorney appointed by the Court to hear the evidence in the divorce case. The commissioner's fee, which varies, is paid by the Complainant. This Commissioner reports upon the matter to the Court and makes a recommendation as to whether or not a divorce should be granted. You may submit the Decree of Reference to the Court after the Defendant has filed an answer to the Complaint.

Seven to ten days after filing the Decree of Reference, you must call (757) 664-4387 to receive the name and phone number of the Commissioner who has been appointed; you must contact him to arrange a time for your hearing. After the hearing date is set, you must serve the Defendant with a **Notice of Commissioner's hearing** stating the date,

time and place of the hearing in accordance with §8.01-296. (You do not have to do this if the Defendant has waived notice.) Should the defendant not be given sufficient notice, you may be required to reschedule your hearing in order to give him/her enough time to prepare.

You must be prepared to present evidence to support every allegation in your Complaint. You must also bring a witness to corroborate your testimony. Many Commissioners question you and your witness to elicit testimony. Some Commissioners may require you to present all of the evidence and to question the witness yourself.

After the hearing, the Commissioner has 30 days to submit his report to the Court. The Commissioner will notify you and the Court once the report has been filed. You will receive a copy of this report.

You may prepare and file your **Final Decree of Divorce** once you receive the Commissioner's Report. This Decree must re-allege all the basic information stated in the Complaint and order that the Divorce is granted in accordance with the Commissioner's recommendations. You must sign the Final Decree of Divorce and submit it to the Court for entry by a Judge. If the Defendant executed a waiver, he/she does not need to endorse the Final Decree. If the Defendant refuses to sign the Decree, you will have to serve him/her with notice to appear in Court on a Motions Day to enter the Final Decree. There is special Motions Day procedures, which **must** be followed.

HEARING BEFORE A JUDGE

If all issues are uncontested, the Court will hear evidence. At the time of the hearing you **must** submit the original proposed Final Decree of Divorce and a copy of any Property Settlement Agreement the parties may have executed. The Decree must contain the endorsement of each party who is legally entitled to notice of the hearing and who will not be appearing at the hearing, unless you will be serving the notice of the date and time of the hearing on your spouse. **The original of any Property Settlement Agreement should be presented to the Court at the hearing.** The hearing before the Judge lasts approximately fifteen minutes. You must be prepared to present evidence to support every allegation in your Complaint through the testimony of yourself and a corroborating witness. You must bring the witness with you at the time of the hearing; it is your responsibility to make certain that your witness can be present on the hearing date. The corroborating witness should have direct knowledge of the matters to which he or she will testify. The witness's knowledge must be based on something more than the information you give the witness in preparation for the hearing. The presiding Judge cannot serve as an attorney, and the moving party must be prepared to ask the relevant questions. If all legal requirements have been satisfied the Judge will generally enter the **Final Decree of Divorce** at the hearing.

Once a Judge has signed your Final Decree of Divorce, the Complainant will receive a certified copy from the Court. **To receive this copy**, you must include a self-addressed, stamped envelope when filing the final decree of divorce.

If you would like to call and check on the status of a case, call the Civil Division at: (757) 664-4387.